UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES

BURNS MACHINERY MOVING & INSTALLATION, INC. AND NATIONWIDE SERVICES LLC

and

Cases 09-CA-125050 09-CA-126160

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, AFL-CIO, LOCAL UNION NO. 70

Jonathan Duffey, Esq.,
for the General Counsel.

James U. Smith III, Esq.,
for Respondent Burns Machinery
Moving & Installation, Inc.

Kevin Norris, Esq.,
for Respondent Nationwide Services, LLC.

David O. Suetholz, Esq. and

Neal Hayes, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

MELISSA M. OLIVERO, Administrative Law Judge. This case was tried in Louisville, Kentucky, on January 21–23 and 26–27, 2015. Charging Party International Association of Bridge, Structural & Ornamental Iron Workers, AFL–CIO, Local Union No. 70 (Union) filed the charge in Case 09–CA–125050 on March 21, 2014, and an amended charge on July 28, 2014. The Union filed the charge in Case 09–CA–126160 on April 9, 2014, and an amended charge on May 27, 2014. The General Counsel issued an order consolidating cases and consolidated complaint on July 30, 2014. The consolidated complaint alleges that Respondent Burns Machinery Moving & Installation, Inc. (Respondent Burns, Burns, or BMMI) and Respondent

¹ The hearing opened by telephone on October 20, 2014, at which time I directed Respondents to provide the General Counsel with voluminous documents and records responsive to his subpoena.

² All dates are in 2014 unless otherwise indicated.

Nationwide Services LLC (Respondent Nationwide or Nationwide) are alter egos and violated Sections 8(a)(5) and (1) of the National Labor Relations Act (Act). The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, including my observation of the demeanor of the witnesses, ³ and after fully considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

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I. JURISDICTION

Respondent Burns, a corporation engaged in the construction industry performs demolition, machinery moving, and installation services for industrial and commercial customers, with an office and place of business in Louisville, Kentucky, annually derives gross revenues in excess of \$50,000 from services performed outside the Commonwealth of Kentucky. Respondent Burns admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.⁴ (GC Exh. 1(k).)

Respondent Nationwide, a limited liability corporation engaged in the construction industry performs demolition, machinery moving, and installation services for industrial and commercial customers, with an office and place of business in Louisville, Kentucky, annually derives gross revenues in excess of \$50,000 from services performed outside the Commonwealth of Kentucky. Respondent Nationwide admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. (GC Exh. 1(k).)

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Respondents admit, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act. (GC Exh. 1(k).) Respondent Burns became signatory to succeeding collective-bargaining agreements with the Union beginning in 1996. (Tr. 180.)

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A. Issues

The primary issue in this case is whether Respondents are alter egos within the meaning of the Act. The General Counsel alleges that Respondent Nationwide was established as a disguised continuance of Burns for the purpose of evading responsibilities under the Act. The General Counsel further alleges that Respondents violated Section 8(a)(5) and (1) of the Act by repudiating and refusing to adhere to a collective-bargaining agreement with the Union. A second issue exists as to whether Respondent Burns violated Sections 8(a)(5) and (1) of the Act by refusing to provide requested information to the Union. (GC Exh. 1(i).)

³ Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations, but rather on my review and consideration of the entire record for this case. I further note that my findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom.

⁴ The General Counsel amended the complaint on October 20 to indicate that both Respondents have offices and places of business in Louisville, Kentucky, as opposed to Lexington, Kentucky, as stated in the consolidated complaint.

B. Overview and History of Respondent Burns' Operations

Respondent Burns was founded in 1996 and owned in its early years by Gregory (Kent) Steer, Butch Grizzle, and Tommie Burns.⁵ (R. Exh. 4; Tr. 467.) Tommie Burns was the incorporator and owned 51 percent of the shares of the business. Steer and Grizzle each owned 24½ percent of the business. As Tommie Burns is African-American, Respondent Burns was certified as a minority-owned business enterprise. Steer managed sales and estimating and also performed project management, including field work. Steer also handled hiring and discipline. (Tr. 46.) Tommie Burns handled sales with assistance from Steer. Grizzle managed operations and worked in the field. (Tr. 470.) Jessica Oster was Burns' controller.⁶ Later in 2009, Steer became the sole owner of Burns.⁷ (R. Exh. 13; Tr. 178.)

There is no dispute that Burns pursued mostly heavy rigging and millwright work. However,

Burns performed everything from small, 1-day jobs, to very complicated, million dollar jobs
lasting a year or more. Kent Steer, who has over 27 years of experience in the machinery
moving and installation industry, explained that heavy rigging work involves moving objects
weighing over 1 million pounds. (Tr. 177; 478.) Examples of such work include moving things
like stamping presses, transformers, injection molding machines, and die cast machines.

Tolerances for this work are within 1/100,000 of an inch. Machine manufacturers void a
machine's warranty if it is not installed within these tolerances. Installation within the specified
tolerance must be documented by a manufacturer representative, customer representative, and
the field superintendent of the moving company. (Tr. 479.)

Steer testified regarding the type of sophisticated, precision work performed by Burns. (R. Exhs. 7, 8, 9, 10, 11, 12.) Burns' promotional materials depicted employees installing a 55,000 glass vessel for DuPont, installing a 1000 ton press for Metalform Industries, removing an 80,000 pound machine at an automotive parts plant, and removing PCB transformers at GE. In order to accomplish these feats, Burns' employees used very specialized and large pieces of equipment. Steer testified that 80 percent of Burns' work was like that shown in the promotional materials; the other 20 percent consisted of smaller jobs. (Tr. 527.)

Although he said Burns did not like to perform lighter or smaller work, Steer testified it sometimes did so to satisfy its major customers. According to Steer, Burns could not have existed doing just the smaller work, as it was not profitable. Nevertheless, Burns did perform what Steer deemed smaller jobs.

Burns had a unionized workforce and was signatory to collective-bargaining agreements with the Ironworkers, Millwrights, and Operating Engineers. (R. Exhs. 1, 2; Tr. 471–472.) Relevant here, Burns became signatory to a collective-bargaining agreement with the Union beginning in

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⁵ I shall refer to Kent Steer as Steer in this decision.

⁶ Jessica Oster is mistakenly referred to as Janice Oster at some places in the transcript.

⁷ For a time, Julia Oster, the sister of Jessica Oster became a shareholder in Burns. Steer explained that he was unable to pay Jessica Oster a bonus at some point when she worked for Burns and instead gave her the stock as a bonus. Later, when Oster left Burns to become an employee of Nationwide, Steer said she felt that owning the stock was a "conflict of interest" and sold the stock to her sister. (R. Exh. 19; Tr. 677.) Oster was never asked about her previous ownership interest in Burns.

1996. Thereafter, Burns remained signatory to agreements with the Union either by signing successor agreements or by failing to withdraw from the bargaining relationship, as required. (GC Exhs. 3, 12a, 13, 14, 15, 16; Tr. 215.) The most recent collective-bargaining agreement with the Union was effective from June 1, 2012, through May 31, 2015. (GC Exh. 3.) On April 17, 2014, Burns sent notice to the Union that it was terminating its bargaining relationship with the Union effective as of the expiration of the most recent collective-bargaining agreement on May 31, 2015. (GC Exh. 17.)

Burns used union labor on all jobs, regardless of size. Several of Burns' major customers required their contractors to employ union labor. (Tr. 674–675.) Most of Burns' competitors were also union signatories. (Tr. 471.)

Tommie Burns, and Respondent Burns' status as a minority-owned business enterprise, opened the door for large projects for Burns in the automotive industry. Burns performed heavy machinery moving and installation in various vehicle manufacturing plants in Kentucky and elsewhere. Burns began performing very large volumes of work for Toyota, which wanted to work with minority-owned contractors. (Tr. 475.) Burns also worked at GM, Ford, Chrysler, Mercedes-Benz, and Hyundai. (Tr. 476.) Without its minority-owned business enterprise status, Burns would not have gotten work from these customers. (Tr. 545.)

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As a result of an opportunity with GM in Michigan, Respondent Burns partnered with International Industrial Contractors (IIC) to form Burns/International Industrial Contracting (BIIC) in 2003. (R. Exhs. 5, 6.) Burns owned 51 percent of BIIC, with the remainder owned by IIC. BIIC accounted for an increasing portion of Burns' overall income from 2005 through 2010. (R. Exh. 17.) BIIC was dissolved in 2011.8 (R. Exh. 20.)

Burns had a core group of 8 to 10 employees, but obtained more workers from the Union's hiring hall when needed. (Tr. 42.) During the entire period of its operations, Burns had over 2000 employees. (R. Exh. 46.) Between 2005 and 2007, Burns used between 6 and 70 union ironworkers at a time from the Union's hiring hall. (Tr. 239.)

Burns operated with composite crews of ironworkers, millwrights, and operating engineers. (Tr. 472.) The Union and the Millwrights' union claim some similar work in their respective agreements. (Tr. 394–395.) However, the crafts have agreed to a division of claimed work when a company is signatory with both the Union and the Millwrights. (GC Exh. 3; Tr. 398.) Burns used ironworkers to perform the rigging, offloading, and uncrating portions of its work. (Tr. 171, 521.) Burns' use of union labor dwindled over the last 4 years and Burns has used none during the 2 years preceding the hearing. (Tr. 238–239.) Burns' union fringe benefit report for May 2013 indicates no activity for that month. (GC Exh. 27.)

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Steer testified that in order to keep Burns competitive, it had to offer its highly-skilled field superintendents hefty compensation packages. (Tr. 532–534.) These packages included salaries in excess of \$100,000 per year. (Tr. 534.) Steer later admitted, however, that the

⁸ Although Steer testified that BIIC was "gone" when Burns was decertified as a minority business in 2009, the evidence shows that articles of dissolution with the Kentucky Secretary of State were not filed until 2011.

superintendents' salaries were set by union contracts. (Tr. 673.) Some of Burns' field superintendents/project managers included Brian Leith, Phil Bollinger, and Ed Young. (Tr. 41.) Wendell Willoughby was a skilled precision millwright, who worked for Burns from 1996 to 2013. (Tr. 67, 184.) Daniel (Bruce) Calvert was a foreman for Burns from 2001 or 2002 until 2006, with an 8-month hiatus during that period. (Tr. 115–116, 143–144.)

Burns had difficulty competing against non-union contractors. For example, Burns had a hard time being competitive at GE. (Tr. 543.) Steer testified that other union contractors would remove charges for some portions of their work, including equipment and labor costs, in order to obtain projects there. (Tr. 676.) Between 1997 and 2005, Burns submitted dozens of requests to operate under the Union's National Maintenance Agreement. (GC Exh. 18; Tr. 222–238.) Operating under the National Maintenance Agreement allows more flexibility for union signatories, in that they do not need to adhere to the collective-bargaining agreement.

Burns had many major customers. Steer testified that these customers included, in addition to those discussed above: Arvin Mentor, Bemis, and the Metropolitan Sewer District. None of these customers were customers of Nationwide. However, Burns did share 41 customers with Nationwide, including: 3M, Bekaert, Enova Premier; Martinrea Heavy Stamping; Sabert; Tsubaki; and the University of Louisville. (R. Exh. 47; Tr. 57.)

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In the spring of 2009, Burns was experiencing what Steer called a "sales slump." (Tr. 564.) Steer testified that the economy was very bad in 2009 and Burns was losing money. Thus, he had to decide between layoffs and pay cuts. He opted for pay cuts. Later he met with all of Burns' employees and told them that the good news was there would not be any layoffs. The bad news was that, in order to prevent layoffs, everyone would have to take a pay cut. Everyone at the meeting seemed to be in agreement about the pay cuts.

Shortly after the meeting, Phil Bollinger called Steer and said, "You didn't mean I was going to take a pay cut?" Steer said he meant everybody. Bollinger said he did not know if he could take a cut. He resigned a week or two after his conversation with Steer. When Bollinger resigned, four or five other employees left. Burns also lost its account with Ford, a large customer of Burns, when Bollinger left.

In the fall of 2009, Tommie Burns came to Steer and said he was in financial trouble and asked Steer to buy out his stock. (Tr. 547.) Steer and Tommie Burns negotiated a stock redemption agreement. The agreement called for a final payout in March 2011. (R. Exh. 13.) This late date was set in order to give Steer an opportunity to find another minority company to partner with. Tommie Burns' stock would not transfer until the final payment. However, if Steer found a minority partner sooner, the final payment could be made sooner. (Tr. 548.) Steer testified that without Tommie Burns, Respondent Burns would have lost its minority certification—a situation he labeled "catastrophic."

⁹ Calvert has worked for JW Services, a company owned by Brian Leith, since 2011. (Tr. 143.)

In October or November 2009, Tommie Burns again came to Steer and said he was hurting. He asked for an expedited payout. Steer agreed to pay the remainder of 95 percent of the payout immediately and to pay the other 5 percent on March 31, 2011. (Tr. 549.)

Shortly after Steer made the remainder of the 95 percent payout payment, Tommie Burns called Steer and asked for his paycheck. (Tr. 550.) Steer advised him that he would not be receiving a paycheck because this was all calculated in the buyout. Steer testified that this made Tommie Burns unhappy.

According to Steer, Tommie Burns went to the National Minority Supplier Development Council (Council) and told them that he was no longer employed by or controlling operations at Burns. The Council decertified Burns as a minority contractor immediately. Burns' minority contractor status was also revoked by the Metropolitan Sewer District and TSMSDC. (R. Exhs. 15, 16.) Steer was advised not to bid on any further contracts as a minority-owned business enterprise.¹¹

In short, during 2009 the national economy worsened, Steer was forced to buy out Tommie Burns and became the sole owner of Respondent Burns, Respondent Burns was decertified as a minority-owned business enterprise, and Bollinger and his group left. In 2011, Burns lost about half of its total remaining business. (Tr. 573.)

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Steer testified regarding a dispute with the Millwright's union that led to the loss of a major customer for Burns. (Tr. 588–589.) Apparently, the business agent for the Millwrights twice came into the Bekaert plant in 2010 or 2011 and accused Burns' employees of working for Nationwide. (Tr. 589.) In doing so, the Millwright business agent violated Bekaert plant rules. In an email message, Bekaert's plant manager demanded that Steer take action against the Millwrights' union, including confiscating and returning any photographs taken by the union. (R. Exh. 21.) Steer was unable to do so and Burns subsequently lost Bekaert as a customer. Steer described this loss of business as significant. (Tr. 594.) By 2011, Burns no longer had enough revenue to cover its overhead. (Tr. 573.) In 2012, Burns began performing only small jobs and in 2013 performed its last job. (Tr. 186; 574–575.)

Steer suffered a number of serious personal health setbacks beginning in October 2011. Due to these numerous medical issues, he was forced to spend time away from running Burns. (Tr. 647.) These health issues lasted into 2014. He testified that by that time all of Burns' employees were gone and he was a "one man show." (Tr. 647.) Steer finally dissolved Burns in 2014. (R. Exh. 19.) Steer testified that he never intended for Burns to be dissolved. However, the economy, Burns' loss of business and employees, and his personal health issues left him no choice.

Several superintendents and foremen of Burns later worked for Nationwide, including Brian Leith, Bruce Calvert, Wendell Willoughby, and Kent Steer. (R. Exh. 46.) Other employees who left Burns for Nationwide include Steven Reed, Greg DeWitt, Jack Richmond, and Kyle Ware. (R. Exh. 46; Tr. 52.)

¹¹ Although Steer said that Burns' minority business enterprise certification was verbally revoked immediately, letters to Burns revoking the certification were not sent until January and March 2010.

Steer testified, in response to a leading question from Burns' counsel, that he never made an effort to intentionally reduce the size and revenues of Burns for the benefit of Nationwide or any other company. "I made no effort to advance another company—to the detriment of Burns Machinery Moving." (Tr. 642.) This testimony seemed awkward and coached and I do not credit it.

C. Overview and History of Respondent Nationwide's Operations

Respondent Nationwide was organized on June 13, 2006. (R. Exh. 48; Tr. 759.) The sole owner and president of Nationwide is Debora Steer, the wife of Kent Steer. (Tr. 791.) Prior to founding Nationwide, Debora Steer was a stay-at-home mom and operated a small wallpaper business. Her wallpaper business had no employees and only 50 customers over 20 years. Nationwide is a certified woman-owned business enterprise. (R. Exh. 49; Tr. 765–766.)

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Debora Steer had no experience in the machinery moving or installation industry before she founded Nationwide. Initially, Harold Brooks, a former customer of Kent Steer, approached him and asked if Burns would be interested in performing maintenance work at Dell.¹² Debora Steer testified that, "I'm sure Kent was probably interested in it, but it really wasn't something that Burns was going to be able to do. One, they were very busy with, you know, all the work they had going, whatever it was. International and—I don't know. They just had plenty of work." (Tr. 757.)

However, according to Debora Steer, because the work at Dell was maintenance work, much of it would need to be done on weekends. As to why Burns was not available for such work, she testified, "Burns would have had to charge double time and over time, whatever union scales are, and it just wouldn't have worked for, you know, just a maintenance crew at Dell." (Tr. 758.)

Debora Steer testified that she was looking for something to do as a career because her children had grown. Therefore, she visited Dell by herself to investigate Brooks' proposal. (Tr. 759.) The work at Dell was general maintenance, including cleaning machines, replacing parts on conveyors, and painting. After the visit, Debora Steer made the decision to start Nationwide. She set salaries and other compensation based on Brooks' advice. (Tr. 762.) Within a few months, the work at Dell evolved to include rigging, conveyor installation, demolition, and installation of guardrails and fencing. (Tr. 762–763.) From there, Nationwide began performing larger machinery moving projects for customers in Kentucky and elsewhere. (GC Exh. 11; Tr. 53–54.)

Initially, Debora Steer hired Andy Ream to assist with sales in 2006. (Tr. 774.) Ream was referred to Debora Steer by Ed Lynch, someone who used to work with Kent Steer. The arrangement did not work out and Debora Steer fired him within 6 months. In early 2007, Debora Steer hired Wayne King as a superintendent/foreman on the recommendation of Brooks.

¹² According to Debora Steer, Dell was outsourcing its maintenance. Kent Steer was not asked about any conversations with Brooks.

(Tr. 775.) King helped Debora Steer with hiring. Neither Ream nor King had any connection to Burns.¹³

Debora Steer hired Kevin Steer, Kent Steer's brother, as Nationwide's general manager in 2010. Kevin Steer had no previous experience in the machinery moving or installation industry; his previous work had been in pharmaceutical sales. ¹⁴ (Tr. 182–183.) Nationwide hired Jessica Oster as its controller in 2013; previous to that she was a contractor to Nationwide starting in 2010. (R. Exhs. 30, 31; Tr. 699, 704.) Kent Steer began providing project management services to Nationwide under a contract in 2011. (R. Exh. 28.)

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Strangely, Debora Steer did not offer any testimony regarding her duties as owner and president of Nationwide. She admitted not knowing much about rigging. (Tr. 788.) Debora Steer testified that only she has the authority on behalf of Nationwide to: engage in banking transactions; enter into contracts; sign checks; use a line of credit; and hire and fire employees. (Tr. 791–792.) All of Debora Steer's testimony about her authority at Nationwide was given in response to leading questions by Respondent's counsel. She gave no testimony regarding what her day-to-day duties and responsibilities are at Nationwide. She gave no specific testimony about discharging or disciplining any employees, other than to state that she discharged Ream. It was clear from her testimony that she knows little about rigging, the construction industry, or the types of jobs performed by Nationwide.

Leith testified that he observed Debora Steer working around the office, performing such tasks as processing the payroll. (Tr. 64–65.) Jessica Oster later took over tasks such as processing payroll and mailing checks. (Tr. 708.) The only specific job that Debora Steer testified she performed on behalf of Nationwide was the preparation of holiday letters to Nationwide employees that went with their bonus checks. (R. Exhs. 52, 53; Tr. 783.)

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Leith started with Burns in 1996. (Tr. 40.) While employed by Burns, Brian Leith formed JW Services (JWS), a project management and machinery moving contractor. (Tr. 69, 709.) Leith provided project management services to Nationwide through JWS under a contract beginning in 2008. (R. Exh. 35.) Leith eventually became an employee of Nationwide in 2009. (R. Exh. 36.) Leith testified that his duties were the same at Nationwide as they had been at Burns. (Tr. 51.) Leith also used the same office at Nationwide that he had when he worked for Burns. (Tr. 49–50.)

Calvert was employed by Nationwide from 2008 through May 11, 2011, when Respondent hinted that he was discharged for alleged misuse of his company credit card. (Tr. 724, 726.) Calvert maintains that he left Nationwide voluntarily. (Tr. 166.) He admitted that he charged personal items on his company credit card, but testified he was never reprimanded for it. Oster testified that Calvert used his company credit card to charge personal items such as gas. (Tr.

¹³ Although King is still employed by Nationwide, he was not called as a witness. In fact, no current employees of Nationwide were called as witnesses, other than Debora Steer and Jessica Oster. It is well-settled "that when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge." *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. mem. 861 F.2d 720 (6th Cir. 1988).

¹⁴ Kevin Steer did not testify at the hearing.

726.) Oster did not report this to Debora Steer. Neither Kent nor Debora Steer was asked about Calvert's alleged credit card misuse or whether he was discharged. Respondent produced no evidence of any kind—credit card statements, bank statements, paycheck stubs showing payroll deductions—to corroborate Oster's testimony. Respondent produced a paycheck stub of
5 Calvert's showing repayment of an employee loan in 2009. (R. Exh. 54.) If Nationwide had tried to recoup the charges, surely a paycheck stub would have shown this. Furthermore, as Debora Steer claimed to be the only person with the authority to hire, fire, or discipline employees, it would be expected that she would have testified about disciplining or discharging Calvert. Debora Steer did not give any such testimony and was not even asked about this subject. Given the lack of such evidence of credit card misuse and discipline, I do not credit Oster's testimony on this point.

Calvert worked for a Tsubaki, a customer of both Burns and Nationwide, from 2006 to 2008. (Tr. 118.) Calvert testified that while at Tsubaki he dealt with Kent Steer whenever he dealt with Nationwide. (Tr. 155–156.) He further testified that he witnessed Steer bid jobs for both Burns and Nationwide while he worked for Tsubaki. (Tr. 119.) In one instance, Steer bid a job on behalf of Burns and later rebid the same job on behalf of Nationwide. (Tr. 119–120.)

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Leith testified that some of Burns' customers wanted them to be more competitive, so to cut labor costs they began working nonunion through Nationwide. (Tr. 47.) Kent Steer advised Leith a nonunion company would be more profitable and competitive. (Tr. 48.) For the first year to year-and-a-half, Nationwide's work was performed out of town. Later, as Burns began losing customers, Nationwide began performing work in and around Louisville. (Tr. 48.)

Steer and Leith decided whether work should be done by Burns or Nationwide. (Tr. 62–63.)
They would consider factors such as scheduling, manpower, availability, and profitability. (Tr. 63.) Burns would generally perform jobs requiring tight schedules and large numbers of employees, which Burns could obtain through the Union's hiring hall. (Tr. 63.) Work performed by Nationwide would be more profitable. (Tr. 63.) Leith testified that he and Steer told Burns' customers, including GE, Tsubaki, and Enova, about the possibility of using Nationwide. (Tr. 64.)

Carrier testified at great length regarding rigging and machinery moving work performed by Nationwide. (GC Exh. 11; Tr. 258–384.) In reviewing the document contained in General Counsel's Exhibit 11, Carrier focused on jobs that required rigging. (Tr. 383.) Based upon Carrier's 20 plus years of experience as a union ironworker and 6 plus years as a union official, I credit his testimony that Nationwide's work detailed in General Counsel's Exhibit 11 would have been claimed by the Union under its collective-bargaining agreement. None of Carrier's testimony that this work would have been performed by an ironworker was rebutted by any of Respondent's witnesses.

Some of Nationwide's work involved moving robot cells, something Steer testified was also done by Burns. (Tr. 269, 528.) Nationwide also moved delicate pieces of equipment, such as an x-ray machine. (Tr. 265–266.) Carrier also gave examples of skilled or complex jobs performed by Nationwide, including relocating heavy presses and retrofitting PCB transformers. (Tr. 227, 299.) Carrier further testified that Nationwide moved many pieces of heavy equipment and would have used power rigging, including installing a weight squeeze machine, relocating

presses, removing and reinstalling trunions, removing a line at Martinrea, removing a lead bath, and installing a mini spare line. (Tr. 269–270, 280–281, 286, 288, 289, 299, 307.)

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Despite Respondent's contention that Nationwide performed only small and simple rigging and machinery moving work, the evidence indicates otherwise. Carrier's testimony and the invoices contained in General Counsel's Exhibit 11 indicate that Nationwide did perform large and complicated projects. (Tr. 318.) Calvert testified that he did machinery moving at GE, Bekaert, and Sabert while employed by Burns and Nationwide. (Tr. 124–125.) Calvert further testified that all of the jobs he performed while working at Nationwide involved ironworker work as defined in the Union's contract. (Tr. 129–131.) More tellingly, Debora Steer admitted in her pretrial affidavit that Nationwide (though Kent Steer) bid "larger rigging, highly skilled, or precision moving type projects." (Tr. 202.)

Steer testified that Burns' superintendents enjoyed the challenging nature of sophisticated rigging work and that more mundane work would have been a "slap in [the] face." (Tr. 534–535.) Steer also testified that the complicated work performed by Burns thinned out the men from the boys. (Tr. 538.) He said that simpler, lighter work would have been "beneath" Burns' superintendents. (Tr. 535.) Nevertheless, some of Burns' superintendents went to work for Nationwide, a company that performed job smaller than those done by Burns. This fact further supports my finding that Nationwide performed larger and more complicated jobs.

All four of the Steers' children are employed by Nationwide. Cooper Steer earned about \$21,000, Emma Steer earned about \$26,000, Will Steer earned about \$27,000, and JD Steer earned about \$40,000 in the period from April 2013 to April 2014. (GC Exh. 12.)

As of the date of the hearing, Nationwide had employed a total of 206 people over the period of its existence. (R. Exh. 47.) Of these, 29 had also been employed by Burns.¹⁵ Additionally, between 2006 and 2015, Nationwide had 229 customers, 41 of which it had in common with Burns.¹⁶ (Tr. 742–743.) Burns itself is listed as a customer of Nationwide. (R. Exh. 47.)

Debora Steer testified that she and Kent Steer went to great efforts to keep Nationwide and Burns separate:

I'm not naive, I knew there would be issues with this, with me having this company and Kent, so you know . . . we've . . . tried to be so very careful about not getting these two [companies] mixed up . . . keeping them completely separate so that we wouldn't have this situation. (Tr. 779.)

D. Contractor and other Business Relationships

1. Accounting Services

¹⁵ This figure does not include contractors, such as Kent Steer.

¹⁶ The number of shared customers between Burns and Nationwide listed in Respondent's Exhibit 47 is not accurate. Although Kent Steer described Voss Clark as a good customer of Burns, and Voss Clark is listed as a customer of Nationwide in Respondent's Exhibit 47, Voss Clark is not identified as a shared customer. (R. Exh. 47; Tr. 541.) As no customer list for Burns was provided, there is no way to tell if there are further errors in Respondent's Exhibit 47.

Debora Steer has always relied on contractors to help her run Nationwide. Initially, she contracted with B.K. Accounting Services (BK) to assist with Nationwide's accounting. Beth Kleim, the owner of BK, set up Quickbooks for Nationwide and instructed Debora Steer on how to use it.¹⁷ BK provided accounting and bookkeeping services to Nationwide from 2007 to 2010. (R. Exh. 38.)

While still employed by Burns, Jessica Oster began working as a contractor providing accounting services to Nationwide on January 1, 2010. (R. Exh. 27; Tr. 621.) The contract for Oster's services was signed by Kent Steer on behalf of Burns and Deborah Steer on behalf of Nationwide. (R. Exh. 27.) While working as a contractor for Nationwide, Oster maintained desks in two separate offices in a facility shared by Burns and Nationwide. She performed all of her Burns work in Office 3 and all of her Nationwide work in Office 2. Oster testified that she physically got up and moved to a separate office when performing Nationwide work. While she was a contractor, Oster kept track of her time worked and submitted invoices from Burns to Nationwide for her services. (R. Exh. 32; Tr. 707.) Oster left Burns, and was hired as a full-time employee of Nationwide, in May 2013. (R. Exh. 31; Tr. 622.)

2. Project Management Services—JW Services

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In 2007, while Burns was still financially stable, Brian Leith formed JW Services (JWS). (Tr. 70; 639–640.) Leith was an employee of Burns at the time. According to Steer, Leith came to him and was upset about taxes. (Tr. 639.) Steer testified that Leith told him that his accountant said he could write off certain expenses if he ran a company out of his house. Steer directed Leith to speak with his wife, Debora Steer, at Nationwide about project management help. Steer testified that Leith went to Debora Steer and that he never spoke to Leith about it again. ¹⁸

According to Leith, the formation of JWS in 2007 was Steer's idea. Leith testified that:

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My understanding was that if I was a subcontractor to [Burns and Nationwide] I could work for both and not have any implications with the union as far as being an employee for them—I don't know exactly how it works.

35 (Tr. 70.) Regardless of whose idea it was to form JWS, it is clear that Kent and Debora Steer allowed Leith to do so. Thus, while still employed by Burns, Leith operated JWS and provided project management services to Nationwide through JWS. (Tr. 203.)

It is not at all clear from the testimony of Kent and Debora Steer why Kent Steer would have allowed one of Burns' highly paid superintendents to operate a side company. The only

¹⁷ Burns used a different software program, Timberline, than Nationwide. (Tr. 714.)

¹⁸ According to Debora Steer, she approached Kent Steer about using Brian Leith as a project manager for Nationwide after he had formed JWS. (Tr. 779.) She testified that after speaking with Kent, she approached Leith.

plausible reason was to allow Leith to work for Nationwide and Burns simultaneously. This would have allowed Leith to bid projects as a union contractor and a nonunion contractor.¹⁹

3. Project Management Services—Kent Steer

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Kent Steer began formally contracting his services for project management and estimating to Nationwide in April 2011.²⁰ (GC Exh. 6; Tr. 575.) Steer was approached by Debora Steer and Kevin Steer prior to April 1, 2011, about contracting his services to Nationwide. Steer testified that Kevin Steer: directs his work; decides pricing for customers; and pursues work. (R. Exh. 28; Tr. 631–633.) Steer testified that he has no authority to: price or send quotes to customers; commit credit; hire employees; discipline employees; discharge employees; or to recommend discipline or discharge. (R. Exh. 28; Tr. 633–634.) Steer signed a contract with Nationwide on April 1, 2011, allowing for this arrangement. (R. Exh. 28.)

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numerous occasions, Burns added to the bill for Steer's past services. On other occasions, Burns indicated that it overbilled for Steer's services. From reviewing the invoices, it appears that Nationwide was billed between \$10,000 to \$16,000 per month for Steer's services in 2012 and 2013. (GC Exh. 6.) It is noteworthy that Nationwide's payroll records reveal that Kevin Steer received a gross annual salary and bonus amount of about \$67,000 and that Kent Steer's annual payments of \$120,000 to \$192,000 would be second only to the annual salary of Debora Steer at \$272,000. (GC Exh. 12.)

It is difficult to discern how much Steer was paid as a contractor for Nationwide. On

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Although Kent and Debora Steer denied that he made hiring decisions, Kent Steer admitted that in the early years of Nationwide, he made wage recommendations for employees if Debora Steer asked him.²¹ (Tr. 638.) Furthermore, both Leith and Calvert testified that Kent Steer did the hiring at both Burns and Nationwide. Both Leith and Calvert also testified that they took direction from Kent Steer while employed by Nationwide. No one testified to taking direction from Debora Steer.

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Kent Steer also denied enforcing work rules unless he was directed to do so by Kevin Steer. (Tr. 637.) However, in an incident involving Nationwide employee Kyle Ware, I find that Steer enforced Nationwide's work rules. By his own testimony, Steer overheard Leith and Ware talking in the shared kitchen of the English Station Road facility. (Tr. 635.) Ware was telling Leith that he thought it was funny that he had driven a long distance only to work two hours. Steer testified, "Before I could stop myself, I went in there and went off on him and just told him that it was not his money." (Tr. 635.) Steer said that his actions came from defending his wife because he felt that Ware was taking advantage of her. Steer stated that he did not know if action was taken against Ware, but he was sure he mentioned the incident to Debora Steer at dinner.

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¹⁹ This explanation is further supported by Leith's testimony that he and Steer would decide whether to bid and perform work as Burns or Nationwide. Visitors' logs from a jobsite show Steer signing in on behalf of Nationwide one day and on behalf of Burns on another day. (GC Exh. 4; Tr. 74–75.)

²⁰ Steer initially testified he began working as a contractor for Nationwide in July 2014. (Tr. 462.)

²¹ Steer also testified that his was not done in connection with his contract with Nationwide.

²² He then stated that Kevin Steer never asked him to do so.

Leith testified that he witnessed Kent Steer discipline Ware for misuse of his Nationwide credit card. (Tr. 65.) According to Leith, Steer told Ware that if Ware did not stop using his company credit card for personal purchases, he would be fired. Steer, however, testified that this incident did not occur and that the only incident between him and Ware was the one concerning Ware's driving a long distance to work two hours.

Moreover, Kent Steer was present when Brian Leith was discharged in 2011. Oster reported to Debora Steer that she believed Leith intended to leave Nationwide and taking both employees and customers with him. (Tr. 719–720.) Both Debora and Kent Steer were present when Leith was discharged. Leith said that they both told him that they heard he was starting his own company and trying to take customers away, so they needed to part ways. (Tr. 73–74.) Kent Steer claimed that Debora Steer fired Leith and he was present only to protect his wife because Leith is a hothead. (Tr. 629.) Debora Steer was not asked about Leith's discharge.

- Steer adamantly denied that he prepared any quotes for Nationwide prior to entering into his service contract with Nationwide on April 1, 2011. (Tr. 650.) Furthermore, Kent Steer testified that he did not bid projects for Nationwide as contained in General Counsel Exhibit 11 where the bidder is listed as "K. Steer." Steer's exact testimony was as follows:
- Q. There was some testimony earlier, and I just want to be precise about the codes that were used on quotes here. Could you please take General Counsel Exhibit 11, the binders, and binder number 4.
 - A. Thank you. Okay.
 - Q. And could you turn to it's [sic] S Number 01962, it's almost the last --
- A. The last page?

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- Q. Almost the last page.
- A. S what, please?
- Q. 1962.
- A. S1962. Is that the quote number?
- Q. No, the quote number is S4 --
 - A. Oh, I'm sorry. S1962. Okay, I got ya, I got ya. Okay, go ahead.
 - Q. Did you bid this?
 - A. No, those are not my initials on it.
 - Q. Could you tell me which initials you're referring to?
- A. The ones at the bottom of the page.
 - Q. K. Steer?
 - A. Yes.
 - Q. That is not you?
 - A. That would be Kevin Steer.
- Q. Okay. So every time in this binder it says K. Steer, and this is the last binder, that would be Kevin Steer?
 - A. Yes.
 - Q. Okay. Did you bid any of this work?
 - A. If it says Kent on it, I did.
- 45 Q. Only Kent?
 - A. Yes.

(Tr. 681–682.) However, the documentary evidence regarding Steer's quotes casts doubt on his assertions.

In reviewing General Counsel Exhibit 11, it becomes apparent that Kent Steer did bid some of the jobs marked K. Steer.²³ For example, on October 1, 2011, K. Steer submitted quote #S4191R2 to NHK and the associated purchase order for this quote is directed to Kent Steer at Nationwide. (ALJ Exh. 1, pp. 3–5.) The following quotes made by K. Steer have an associated purchase order directed to the attention of Kent Steer at Nationwide:

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- #S4350R2 to NHK dated May 17, 2012. (ALJ Exh. 1, pp. 6-9.)
- #S4441 to NHK dated October 23, 2012. (ALJ Exh. 1, pp. 10-11.)
- #S4449 to Hancock Machine & Tool dated November 7, 2012 (ALJ Exh. 1, pp. 12-13.)
- #S4452 to Hancock Machine & Tool dated November 14, 2012 (ALJ Exh. 1, pp. 14-15.)

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- #S4590R1 to NHK dated June 5, 2013. (ALJ Exh. 1, pp. 16-18.)
- #S4616R1 to NHK dated July 16, 2013. (ALJ Exh. 1, pp. 19-20.)
- #S4639 to GCH dated August 13, 2013. (ALJ Exh. 1, pp. 21-22.)
- #S4694 to NHK dated October 21, 2013 (ALJ Exh. 1, pp. 23-26.)
- #S4709 to NHK dated November 22, 2013. (ALJ Exh. 1, pp. 27-29.)
- #S4786 to NHK dated April 30, 2014. (ALJ Exh. 1, pp. 30-34.)
- #S4456 to J.M. Smucker Company dated December 3, 2012. (ALJ Exh. 1, pp. 35-36.)

In addition, two purchase orders from Alcan Packaging in 2009 list Kent Steer and "Kent S." near the amount due. (ALJ Exh. 1, p. 1, 2.) The presence of Steer's name on two documents from well before he entered into his contractual relationship with Nationwide casts serious doubt upon his claim that he did not prepare any quotes for Nationwide prior to April 2011.

Furthermore, in light of the documents linking Kent Steer to quotes made by "K. Steer," it seems likely that most, if not all, of the bids made by K. Steer from 2009 through 2014 contained in General Counsel's Exhibit 11 were made by Kent Steer.

4. Other Services

Nationwide used Sprint as its cell phone carrier from 2007–2014. (R. Exh. 40.) The Hartford and Grange Insurance have provided Nationwide's liability insurance. (R. Exh. 41.) Humana and Anthem have provided Nationwide's employee health insurance. (R. Exh. 42.) Nationwide has also purchased other insurance from CNA, Amerisure, and KEMI through BB&T, an insurance agency. (R. Exh. 43.) No testimony was given or similar records produced regarding Burns' cell phone carrier or insurance providers.

numbers, and admitted them into the record as ALJ Exh. 1.

²³ At the hearing, the General Counsel admitted over 1,100 of pages of Nationwide business records, including quotes, invoices, and associated documents as GC Exh. 11. The pages were not marked for reference. These documents were admitted into evidence in 4 large binders, but in the electronic record they were consolidated into 2 volumes. (GC Exh. 11.) In order to assist the parties, the Board, or a reviewing court, I have copied the documents from GC Exh. 11 referenced in this decision, added page

E. Shared Facilities and Equipment

1. Facilities

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Respondent Burns operated out of a facility located at 1631 W. Hill Street in Louisville beginning in 1997. (Tr. 609; 620.) This building was owned by Tommie Burns. (Tr. 609.) In August 2009, the Hill Street facility flooded. All work was then transferred to employees' home offices. (Tr. 705.) Nationwide operated out of the home of Kent and Debora Steer since the time it was founded in 2007. (Tr. 786.) Therefore, from August 2009 until July 2010 both Respondents operated out of the home of Kent and Deborah Steer.

Oster testified that Nationwide never operated at the Burns facility on Hill Street. (Tr. 705.) However, Leith testified that he performed work for Nationwide out of Burns' Hill Street facility. (Tr. 49–50.) In this instance, I credit the testimony of Leith, who I have found more credible.

In July 2010, Respondents began renting a common facility located at 2821 S. English Station Road in Louisville (English Station Road facility). (R. Exhs. 25, 26; Tr. 705.) Burns and Nationwide maintain certain separate offices and warehouse space within the facility. However, they share common areas and equipment, including a reception area, kitchen, conference room, closets, a copy machine, a fax machine, and a phone system. (Tr. 614–616.) Debora Steer does not have an office at the English Station Road facility, but Kevin Steer and Jessica Oster do. (Tr. 679; 706.)

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The English Station Road facility is owned by Steer Properties, a company owned by Kent and Debora Steer and their four children. (Tr. 179.) Steer Properties leases the office space at the English Station Road facility to Burns and Nationwide. (R. Exhs. 25, 44; Tr. 179, 786.) Other space in the warehouse portion of the English Station Road facility is leased to other businesses and individuals. (R. Exh. 50; Tr. 770.)

2. Equipment

In 2009, Steer sold many of Burns' capital assets to Unisource Rentals & Leasing

(Unisource), an equipment rental company allegedly owned by Cooper and JD Steer. (Tr. 602.)

Cooper and JD Steer are two of the sons of Kent and Debora Steer. However, Unisource's 2012 annual report lists Debora Steer and JD Steer as the only members of the company. (GC Exh. 26.)

According to a bill of sale dated December 31, 2009, Burns sold fork trucks, shop equipment, and trailers to Unisource for \$54,800. (R. Exh. 23.) Burns also sold several vehicles to

²⁴ It is difficult to understand why, when Burns was dissolved in 2014, Steer maintains Burns' office space and equipment at the English Station Road facility. This was not explained at the trial.

²⁵ Both are also employees of Nationwide. (GC Exh. 12.)

Unisource Trucking, another company owned by Cooper and JD Steer. (Tr. 607.) Burns sold 10 vehicles to Unisource Trucking for \$25,000.²⁶ (R. Exh. 24.)

Both Nationwide and Burns rented equipment from Unisource. (Tr. 186, 596.) However, no lease agreements for equipment between Nationwide or Burns and Unisource were produced at the hearing. The address for both Unisource Rentals and Unisource Trucking is the home of Kent and Debora Steer. (R. Exhs. 23, 24.)

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Respondents produced lists of all equipment rental companies ever used by Nationwide and Burns at the hearing. (R. Exhs. 22; 45.) These documents do not list where the vendors are located, when or for how long Nationwide and Burns rented equipment from each, or how much equipment Nationwide or Burns rented from each. Kent Steer acknowledged that some of the equipment rental companies were used before Unisource was created. (Tr. 678.) Furthermore, the lists do not include Unisource Trucking, a company from which Steer testified Nationwide rents its vehicles. As such, I accord these lists little weight.

Leith testified that the equipment used by both Burns and Unisource was stored together, first at the Hill Street location and later at the English Station Road facility. (Tr. 71.) According to Leith, Nationwide usually used Burns' equipment or rented its equipment from Unisource. (Tr. 722.) Calvert also testified that the equipment of Burns and Nationwide were not stored separately. (Tr. 128.) Calvert testified that while working for Nationwide, he used equipment with Burns stickers on it. (Tr. 128.) Calvert testified that Nationwide rented some equipment from Unisource, which he mistakenly referred to as "One Source." (Tr. 127–128.)

F. The Union's Investigation and Information Requests

In September 2013, the Union was alerted that equipment marked "Burns" was located at a GE facility in Louisville. Tom Carrier, the Union's business manager, was unaware of any Burns personnel being at GE at that time, so he went to investigate.

Carrier did not see any Burns personnel at the GE jobsite. However, he did observe and photograph a welding machine and cage bearing "Burns" stickers or logos. ²⁷ (GC Exh. 19.) Carrier also observed lifts with "Unisource" stickers on them. (Tr. 241.) Carrier did not make any further attempts to investigate the GE jobsite. Instead, he called then-Union Business Manager Ronnie Lynch and advised him what he had learned.

Nationwide Services came to Carrier's attention through the Union's targeting program. (Tr. 247-248.) When union contractors bid against nonunion contractors, they can request financial assistance from the Union. As part of the program, the union contractors must report the name of the nonunion contractor they are bidding against. The name "Nationwide" popped up repeatedly at GE in Louisville. (Tr. 248.) Carrier then began doing research on Nationwide on the website of the Kentucky Secretary of State. He located an application for reinstatement for

²⁶ Steer testified as to how he ascertained that he was getting fair market value for the vehicles and other equipment. Neither Cooper nor JD Steer testified as to how these agreements were reached.

²⁷ Carrier testified that it would be highly unusual for a company not to paint over or remover stickers of another company after purchasing equipment. (Tr. 439.) I credit his testimony.

Nationwide signed by Debora Steer. (GC Exh. 20.) Seeing Debora Steer's name made Carrier suspicious that there may be a relationship between Burns and Nationwide because he knew Kent Steer owned Burns. An insurance document from the Kentucky Workers' Compensation website listed the Steers' home address as the address for Nationwide. (GC Exh. 21.)

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After conferring with the Union's attorney, Carrier sent a letter to Kent Steer on January 22, 2014. (GC Exh. 7; Tr. 252.) In the letter, Carrier sought information concerning Burns' customers, jobs (and specifically regarding any work performed at GE), employees, wages, machinery, subcontractors, and rental companies used since 2012. (GC Exh. 7.) Carrier requested that Steer provide this information by February 13.

On February 11, Steer responded to Carrier with a short letter. (GC Exh. 8.) Steer's letter stated only that Burns was not working at GE and that Burns did not have a contractual relationship with the Union. Steer's letter did not attach any information responsive to Carrier's January 22 request.

David Suetholz, the Union's attorney, sent a response to Steer's letter on March 4. (GC Exh. 9.) Suetholz' letter restated the Union's information requests and advised Steer that Burns remained signatory to the collective-bargaining agreement with the Union by operation of the continuation clause. Suetholz asked that Steer comply with the Union's information request by March 14.

In late March or early April, Suetholz asked Burns' attorney (Smith) about the information request at an unrelated arbitration hearing. He inquired again a few weeks later during a telephone conversation. (Tr. 448.) Smith responded that he was going to let the Board take care of it. Burns finally provided the information in May 2014, but never explained the reason for the delay. (Tr. 449.) In a letter to a Board agent in June, Burns' attorney indicated that he had been out-of-town on business in March and that nothing in the Union's information request was "time sensitive." (GC Exh. 10.) Burns' attorney further indicated that he "deferred" replying to the Union's information request in April so that he could respond to the unfair labor practice charges underlying this case. (Id.)

DISCUSSION AND ANALYSIS

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A. Witness Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-ornothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB at 622. Many of my credibility findings are generally incorporated into the findings of fact set forth above.

Brian Leith appeared to be a generally credible witness. He testified in a calm and forthright manner. Although he was generally unsure of dates and some of his testimony was not extremely detailed, I do not find that this detracts from his overall credibility. His testimony regarding the formation of JWS and other matters seemed more plausible than the testimony given by other witnesses. For example, I credited Leith's version of events surrounding the formation of JWS over that of the Steers because it was more plausible. In addition, Respondent's counsel implied that as a competitor Leith stood to benefit if Nationwide would be forced to pay union wages. However, Leith has operated JWS since 2007 and did so with the blessing of Kent and Debora Steer while he was in their employ. He further admitted things that could be detrimental to his overall credibility, such as that he was fired by Nationwide. Therefore, I have generally credited the testimony of Leith.

Bruce Calvert also appeared to be a credible witness. He did not appear nervous while testifying, which he did in a deliberate fashion. Like Leith, Calvert admitted things that might be seen as detrimental to his overall credibility, such as making personal charges on his company credit card. The single contradiction in his testimony was that he denied receiving bonuses at Nationwide, while his payroll records show that he did. (R. Exh. 37.) I do not find that his single discrepancy weakens his testimony. As such, I have credited Calvert's testimony.

- Tom Carrier appeared to be a credible witness. He testified in a sure and calm manner. He did not get upset during an intense cross-examination. I credited his testimony regarding whether the Union would have claimed work performed by Nationwide based upon his many years of experience in the industry.
- David Suetholz also appeared to be a credible witness. He delivered his testimony in a steady manner. His testimony did not waver on cross-examination. Furthermore, his testimony was not contradicted by any other evidence or testimony.
- Kent Steer's testimony did not seem generally credible. He displayed an unwavering desire to stay on message that Burns and Nationwide are wholly separate enterprises. He sparred with Counsel for the General Counsel during his brief cross-examination. (Tr. 673, 674–675.) At one point he looked to Respondent's counsel for assistance when being asked to limit his answers to the question before him. (Tr. 675.)
- 35 Steer gave contradictory testimony regarding whether he knew if Nationwide rented equipment from Unisource. He engaged in the following colloquy with the General Counsel on the issue:
 - Q. Okay. And does Nationwide rent equipment from Unisource?
- A. That would, that would be—that's something that I—I know what equipment, when I'm project managing and estimating, I know what equipment is made available to me.
 - Q. Okay.

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- A. But as far as where it's coming from and that kind of—and the rental details, I'm not—
- Q. Okay. Do you know, for the jobs you manage on behalf of Nationwide, did you get equipment from Unisource?

A. Yes.

(Tr. 185–186.) Clearly Steer knows that Nationwide rents equipment from Unisource and his initial refusal to concede this point detracts from his credibility.

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Furthermore, Steer's testimony regarding whether he made wage recommendations to Debora Steer was confusing:

Q. Did you ever make—what, if any, wage recommendations did you make with respect to any NWS employees?

A. No—well, if—in the early, in the early years, if Debbie had—if she was contacted by an individual that wanted to come to work for her—

- Q. You're talking about after 2011?
- A. No, I'm talking about—
- Q. I'm talking about—
- A. I'm sorry. Go ahead.
- Q. In connection with your subcontract, did you ever make any wage recommendations—
 - A. No.
- Q.—for any employee? (Tr. 638.)

Steer initially testified that he made wage recommendations "if [Debora] was contacted by an individual that wanted to come work for her" then immediately switched gears and said he never made wage recommendations in connection with his subcontract. Thus, for the reasons stated herein and in other parts of this decision, I did not credit the testimony of Kent Steer unless it was corroborated by another more credible witness, was inherently plausible, or was against the interests of Respondent.

I further did not find the testimony of Debora Steer credible. She often seemed in a hurry to answer, sometimes answering before a question was finished. (Tr. 768, 778, 793.) She seemed hesitant to testify at times about critical events such as the formation of Nationwide. When testifying about her work experience and how Nationwide came to be, she used the delaying phrase "you know" 27 times in just 5 pages of transcript testimony. (Tr. 754–758.) She further gave testimony at the hearing that was contradicted by her pre-trial affidavit testimony. (Tr. 201–202.) Thus, I did not credit the testimony of Debora Steer unless it was corroborated by another more credible witness or was against the interests of Respondent.

Jessica Oster appeared to be a somewhat credible witness. She testified in a sure manner. However, some of her testimony did not make sense and I did not credit it. For example, she testified that she confronted Bruce Calvert about misuse of his company credit card. However, she did not report this to anyone. It does not make sense that if she believed that Calvert was stealing, she would not have reported it to Debora Steer (like she said she did when she heard that Brian Leith was trying to steal Nationwide's clients). Furthermore, I have given some of the documents prepared by her little weight. For example, the list of Nationwide employees she provided did not include dates of employment or job titles. (R. Exh. 46.) Respondent's Exhibit 47 contains at least one inaccuracy. The list of equipment rental companies used by Nationwide did not include key information such as where the company is located or when or how often

Nationwide rented equipment from each company. (R. Exh. 45.) Thus, I credited Oster's testimony except as specifically set forth above in the findings of fact.

B. Nationwide is an Alter Ego of Burns

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The determination of alter ego status is a question of fact for the Board, resolved by an examination of all attendant circumstances. *US Reinforcing, Inc.*, 350 NLRB 404, 404 (2007), citing *Southport Petroleum v. NLRB*, 315 U.S. 100, 106 (1942). In deciding whether two nominally distinct entities are alter egos, the Board looks to a number of factors, including: whether the two have substantially identical management, business purpose, operations, equipment, customers, and supervision; whether there is common ownership; whether the two use the same building; and whether the purpose behind the creation of the alleged alter ego was to evade responsibilities under the Act. *Cofab, Inc.*, 322 NLRB 162, 163 (1996), enfd 159 F.3d 1352 (3d Cir. 1996). No one factor is determinative in the analysis, nor do all of these indicia need to be present for finding an alter ego relationship. Id.

1. Ownership

The record makes clear that Debora Steer owned Nationwide from its inception in 2007, and that Kent Steer owned Burns after buying out Tommie Burns' stock in the company in 2009. However, the fact that Nationwide and Burns had different owners does not preclude a finding that they have common ownership. A finding of common ownership may be made where, although the same individuals are not shown to be owners of each company, the companies are owned by members of the same family. *SRC Painting, LLC,* 346 NLRB 707 (2006), citing *Kenmore Contracting Co.,* 289 NLRB 336, 337 (1988), enfd 888 F.2d 125 (2d Cir. 1989). Ownership by members of the same family militates in favor of finding alter ego status. *Midwest Precision Heating & Cooling,* 341 NLRB 435 (2004), citing *Cofab, Inc.,* 322 NLRB at 163.

I find that Burns and Nationwide had common ownership based upon the husband and wife relationship of their owners, Kent and Debora Steer. The Board will not hesitate to find common ownership when the owners of two entities are members of the same family. *Fallon-Williams*, *Inc.*, 336 NLRB 602, 602 (2001). In *Fallon-Williams*, the Board affirmed a judge's finding that two entities were alter egos when the owner of one entity was married to the owner of the other. 336 NLRB at 602. Similarly, in this case, the sole owners of Burns and Nationwide are married and this militates in favor of a finding of alter ego status.

2. Management and Supervision

I further find that Burns and Nationwide shared enough common management and supervision to be alter egos. Kent Steer, Brian Leith, Bruce Calvert, and Wendell Willoughby, performed supervisory functions for both entities. Furthermore, both Kent Steer and Jessica Oster performed managerial functions for both companies.

Out of core group of 8 to 10 Burns employees, four became supervisors for Nationwide. Steer, Leith, Calvert, and Willoughby all performed project management or supervisory functions for both Burns and Nationwide. Jessica Oster became Nationwide's controller, first as a contractor and later as an employee. Kent Steer became a project manager and estimator of

Nationwide beginning in 2011, albeit as a contractor. However, as found above, Steer's involvement with Nationwide predated his 2011 contract. As credibly testified to by Leith and Calvert, Steer was a manager for Nationwide from its inception.

There were differences between Burns' and Nationwide's management. Debora Steer was Nationwide's president and owner and Kevin Steer, Kent Steer's brother, was Nationwide's general manager. Neither Debora nor Kevin Steer had any role at Burns. However, was that neither Debora nor Kevin Steer had any experience whatsoever in the rigging, maintenance, or machinery moving or installation industry. In fact, the evidence shows and I find that Kent Steer is the true manager of Nationwide. Despite Respondents' attempts to deny this, the evidence that Steer has been bidding projects for Nationwide since 2009 (2 years before he entered into a contract with Nationwide for this service) certainly casts doubt on Respondent's contentions.

The Board has upheld a finding of alter ego status when the owner of one company was little more than a figurehead. *Alexander Painting, Inc.,* 344 NLRB 1346 (2005). In *Alexander Painting,* the judge noted that the husband and owner of the first company supervised the work of the employees of the second company and that the wife, and owner of the second company, was a mere figurehead. Id. Analogously, in this case, it is Kent Steer who performs the actual work of running Nationwide. I have credited the testimony of Leith and Calvert that Kent Steer is responsible for hiring, discharge, and discipline at Nationwide, as he was at Burns. Kent Steer also performs estimating and project management for Nationwide, just as he did for Burns. Deborah Steer's duties were shown to be little more than writing holiday letters after Jessica Oster was hired as Nationwide's controller. As such, I find that Burns and Nationwide share common management.

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Respondents' attempts to cloak some of these relationships behind contracts are unavailing. I have already found that Steer performed managerial and estimating duties for Nationwide prior to the signing of his 2010 contract. Furthermore, the limits on his authority testified to by Steer do not withstand scrutiny. As found above, Steer engaged in hiring, discipline, and other managerial responsibilities for Nationwide both before and after he signed a contract with limitations to the contrary. Respondents did not establish how Debora Steer, with little knowledge of Nationwide's business, or Kevin Steer, who did not testify at the hearing, run Nationwide or supervise Kent Steer. As such, I find that Kent Steer is the real driving force behind both Burns and Nationwide.

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Moreover, Jessica Oster performed duties as controller for both Burns and Nationwide at the same time. Although her work for Nationwide was initially done pursuant to a contract, she was in fact, performing these duties at the same time. No testimony was adduced at the hearing as to how either Oster's or Steer's contacts were negotiated. Given Debora Steer's lack of knowledge about Nationwide's business, it is difficult to understand how these arrangements were made at arm's length.

Thus, I find that Burns and Nationwide shared common management and supervision, and that both factors militate in favor of a finding of alter ego status.

3. Business Purpose

Burns was a machinery moving and installation contractor. Although Burns preferred to bid heavy, sophisticated jobs, it also performed smaller, less complex work. In fact, by Steer's own admission, 20 percent of this work was of the smaller, less complex variety. By 2013, Burns was performing only smaller, less complex jobs.

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Nationwide started as a maintenance contractor for Dell in 2006. However, this role rapidly expanded to performing machinery moving and rigging work. Eventually, Nationwide began performing more complex and heavier machinery moving and rigging work.

I do not find the argument that Burns pursued so-called heavy rigging work and that Nationwide pursued smaller jobs availing. Such work would not be available to Nationwide as it was not a certified minority-owned business enterprise, as was required by several of Burns' major customers. Thus, such work would not even be available to Nationwide. However, Nationwide did perform many jobs similar in scope to those performed by Burns. Furthermore, Burns and Nationwide both performed machinery moving and rigging work.

The Board has found alter ego status where an alter ego performs only a portion of the former company's work or less work than the former company. *Better Building Supply Corp.*, 283 NLRB 93, 95 (1987). Thus, although Nationwide operated on a smaller scale than Burns, it performed the same type of work in the same industry. As such, I find that Burns and Nationwide shared a common business purpose.

4. Operations

There is no dispute that both Burns and Nationwide operated out of several common facilities: first on Hill Street, then out of the home of Kent and Debora Steer, and then out of the English Station Road facility. Furthermore, according to the credible testimony, Burns and Nationwide stored their equipment together at the Hill Street and English Station Road facilities. Leith testified that he did the same work for Nationwide as he did for Burns and that he did so at these common facilities.

Leases dividing up the space at Respondents' English Station Road facility cannot defeat the common operational situs of Respondents. Only one such lease is in the record; a lease between Burns and Steer Properties. (R. Exh. 25.) No similar lease for Nationwide was ever produced. However, I will assume that leases for the English Station Road facility were made between Steer Properties and Burns and Steer Properties and Nationwide. While certain offices were rented by one company or the other, they both shared common areas and equipment. Furthermore, all of these contracts would have been made amongst members of Kent Steer's immediate family. Kent and Debora Steer are both owners of Steer Properties, while Kent owns Burns and Debora owns Nationwide. Essentially they were making contracts with themselves. The contract between Nationwide and Steer Properties, if one exists, was not produced at trial. Respondents' bald effort to camouflage the shared nature of the English Station Road facility does not pass muster.

Burns and Nationwide shared 30 employees with Nationwide (the 29 employees identified in R. Exh. 47 plus Kent Steer). It is not surprising that Nationwide did not share more employees as Burns obtained its employees from the Union's hiring hall and Nationwide operated as a nonunion contractor. However, Nationwide's core staff was comprised of former Burns employees who assumed similar positions at Nationwide. Leith and Calvert credibly testified that five of Burns core employees left and went to work directly for Nationwide.

Leith credibly testified that he and Steer would decide whether to use Burns or Nationwide on a particular job. Furthermore, Calvert's testimony established that Steer bid a single job at Tsubaki first for Burns and then for Nationwide. This testimony establishes that the two entities were used interchangeably by Steer.

Therefore, I find that Burns and Nationwide shared common operations.

5. Customers

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The evidence establishes that Nationwide and Burns bid on the same projects. As noted above, Calvert's testimony established that Steer bid a single job at Tsubaki first for Burns and then for Nationwide. Sign-in sheets at Enova Premier demonstrate that Kent Steer signed in on behalf on Nationwide one day and on behalf of Burns on another.

Between 2006 and 2015, Nationwide had 229 customers, 42 of which it had in common with Burns. As noted above I found an inaccuracy in the list of shred customers in Respondent Exhibit 47, and have added an additional shared customer (Voss Clark) to the number contained therein. Although the customers of Burns and Nationwide do not overlap, this is not surprising as most of Burns' major customers required the use of union contractors or minority-owned business enterprises and Nationwide was neither. Nevertheless, the record evidence establishes that there was only about an 18 percent overlap in the customers of Nationwide and Burns.

The Board has declined to find alter ego status when less than half of the alter egos customers were also customers of the former company. *Polis Wallcovering, Inc.*, 323 NLRB 873, 876 (1997). Similarly, in this case there is only a small degree of customer overlap. However, the small amount of shared customers is the only factor that weighs against a finding of alter ego status. However, this lone factor is not decisive and I find that, despite the lack of extensive customer overlap between Burns and Nationwide, they are alter egos.

6. Equipment

The evidentiary record shows that Nationwide used Burns' equipment. Leith and Calvert both testified that while working at Nationwide they used Burns' equipment. Additionally, although Burns sold much of its equipment in 2009, it did so to Unisource, a company purportedly owned by two of the children of Kent and Debora Steer. Both children also work for Nationwide. This can hardly be described as an arm's length transaction. Additionally, the equipment rental vendor lists submitted by Respondents at the hearing do little to establish that Respondents rented from other vendors with any sort of regularity. The lists were lacking the

²⁸ As noted in the findings of fact, Debora Steer is also listed as a member of Unisource in its records.

locations of the vendors, what they were used, how often they were used, or if they were used at all after Unisource was formed. Therefore, I find that Burns and Nationwide shared common equipment.

7. Purpose Behind the Creation of Nationwide

The evidence shows that Burns sometimes had difficulty competing with nonunion contractors. Burns applied for dozens of waivers allowing it to operate under the Union's National Maintenance Agreement between 1997 and 2005. (GC Exh. 18; Tr. 222–238.) Furthermore, Steer's bidding of the same work on behalf of Burns and Nationwide gives rise to a suspicion that the purpose behind the formation of Nationwide was to evade Burns' obligations under the Act.

Perhaps most telling, however, was Debora Steer's testimony that she created Nationwide to get business that Burns could not because it could not afford to pay union-scale wages. Thus, Nationwide was created to compete for work that Burns could not as a union contractor. In light of this evidence, I find that Nationwide was created to evade Burns' obligations under the Act.

8. Analysis of All Factors

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In reviewing all of the factors as a whole, I find that the General Counsel has demonstrated that Burns and Nationwide are alter egos. Burns and Nationwide had substantially identical ownership based upon the spousal relationship of Kent and Debora Steer. Nationwide established itself as a rigging contractor, just as Burns had been, albeit on a smaller scale. Kent Steer bid on projects for both Burns and Nationwide. Nationwide hired a substantial number of Burns' key supervisors and managers. Nationwide used much of Burns' equipment. Although some of this equipment was rented through Unisource, the ownership of Unisource by members of the Steer family makes this purportedly contractual relationship suspect. Both companies operate from a shared facility. Finally, Nationwide was set up specifically as a nonunion contractor to take on a project that would not have been profitable for union contractor Burns. In short, most of the relevant factors support a finding that Burns and Nationwide are alter egos.

As Nationwide is an alter ego of Burns, Nationwide is obligated to comply with the terms of the collective-bargaining agreement that Burns entered into with the Union. The evidence is clear that since its formation in 2006, Nationwide failed and refused to apply the terms and conditions of that collective-bargaining agreement (including the wage and fringe benefit provisions therein). Accordingly, Burns and Nationwide, as its alter ego, violated Section 8(a)(5) and (1) of the Act by failing and refusing to apply the terms of the collective-bargaining agreement that Burns entered into with the Union and by failing and refusing to bargain collectively with the Union as the exclusive collective-bargaining representative of Burns' and Nationwide's bargaining unit employees.

C. Burns Violated the Act in Unreasonably Delaying Responding to the Union's Information Request

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The evidentiary record establishes, and I find, that Respondent Burns violated the Act in unreasonably delaying providing information responsive to the Union's January 20, 2014

information request. Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of its employees." 29 U.S.C. §158(a)(5). An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative in contract administration. *A-1 Door & Building Solutions*, 356 NLRB No. 76, slip op. at 2 (2011). Generally, information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. See *Southern California Gas Co.*, 344 NLRB 231, 235 (2005). By contrast, information concerning extra unit employees is not presumptively relevant; rather, relevance must be shown. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). The burden to show relevance, however, is "not exceptionally heavy," *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983); "[t]he Board uses a broad, discovery-type standard in determining relevance in information requests." *Shoppers Food Warehouse*, 315 NLRB at 259.

When a union requests information relating to an alleged alter ego relationship, the union bears the burden of establishing the relevance of the requested information. *Conditioned Air Systems*, 360 NLRB No. 97, slip op. at 5 (2014), citing *Reiss Viking*, 312 NLRB 622, 625 (1993). A union cannot meet its burden based on a mere suspicion that an alter ego relationship exists; it must have an objective, factual basis for believing that the relationship exists. See *M. Scher & Son, Inc.*, 286 NLRB 688, 691 (1987). The union is not obligated to disclose those facts to the employer at the time of the information request. *Baldwin Shop 'N Save*, 314 NLRB 114, 121 (1994). Rather, it is sufficient that the General Counsel demonstrate at the hearing that the union had a reasonable belief at the time of the request. *McCarthy Construction Co.*, 355 NLRB 50, 52 (2010), affd. and incorporated by reference at 355 NLRB 365 (2010).

An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to provide the information. *Monmouth Care Center*, 354 NLRB 11, 51 (2009), reaffirmed and incorporated by reference, 356 NLRB No. 29 (2010), enfd. 672 F.3d 1085 (D.C. Cir. 2012). It is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). Rather, what is required is a reasonable good-faith effort to respond to the request "as promptly as circumstances allow." Id. See also *Woodland Clinic*, 331 NLRB 735, 737 (2000). In evaluating the promptness of an employer's response, the Board considers the complexity and extent of the information sought, its availability, and the difficulty in retrieving the information. *West Penn Power Co.*, 339 NLRB 585, 587 (2003), citing *Samaritan Medical Center*, 319 NLRB 392, 398 (1995), enfd. in relevant part 394 F.2d 233 (4th Cir. 2005).

In this case, after seeing equipment labeled "Burns" at a GE facility in Louisville, Carrier began investigating. Burns had not used union workers in over a year and seeing its equipment at a jobsite made Carrier suspicious. Thereafter, on the website of the Kentucky Secretary of State, he located an application for reinstatement for Nationwide signed by Debora Steer. Seeing Debora Steer's name made Carrier suspicious that there might be a relationship between Burns and Nationwide. An insurance document from the Kentucky Workers' Compensation website listed the Steers' home address for Nationwide. Thus, Carrier knew that Nationwide was run by someone with the same last name as the sole owner of Burns and that Nationwide was being run out of the home of Kent and Debora Steer. Based upon these facts, I find that the General

Counsel has demonstrated that the Union had a reasonable suspicion of alter ego status at the time it sent its information request.

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I further find that Burns' reply to the Union's information request was untimely. As stated above, Carrier made his information request on January 22. Steer's initial response to the Union did not attach any of the information requested by the Union. The Union did not receive the requested information until May, 4 months after its initial request. Respondent never requested an accommodation or additional time to respond to the Union's request.

Respondent asserted no legitimate reason for the delay. Neither Kent Steer's health nor the other obligations of Respondent's counsel excuse the 4 month delay in responding to the Union's information request. Absent evidence justifying delay, even a delay of several weeks may constitute a violation. See *United States Postal Service*, 359 NLRB No. 4, slip op. at 3 (2012) (1-month delay unreasonable); *United States Postal Service*, 308 NLRB 547, 551 (1992) (4-week delay unreasonable); *International Credit Service*, 240 NLRB 715, 718–719 (1979), enfd in relevant part 651 F.2d 1172 (6th Cir. 1981) (6-week delay unreasonable); *Monmouth Care Center*, 354 NLRB 11, 52 (2009), enfd. 672 F. 3d 1085 (D.C. Cir. 2012) (6-week delay unreasonable).

In sum, Respondent Burns violated Section 8(a)(5) and (1) of the Act by providing requested information to the Union only after an unreasonable delay of 4 months.

CONCLUSIONS OF LAW

- 1. Respondent Burns Machinery Moving & Installation, Inc. (Burns) and Respondent Nationwide Services, LLC (Nationwide) are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
- The International Association of Bridge, Structural & Ornamental Iron Workers, AFL—CIO, Local Union No. 70 (Union) is a labor organization within the meaning of Section 2(5) of the Act, and upon signing of a collective-bargaining agreement, became the exclusive collective-bargaining representative for all of Respondents' employees in the collective-bargaining agreement with Union, in effect from June 1, 2012, to May 31, 2015, which establishes the terms and conditions of employment for Respondents' employees in the appropriate bargaining unit set forth in the Recognition clause during the term of the contract and any automatic renewals or extensions thereof.
 - 3. At all material times, Respondents Burns and Nationwide have had substantially identical ownership, management, supervision, business purpose, operations, and equipment.
 - 4. Burns and Nationwide have been alter egos of each other within the meaning of the Act and are jointly and severally liable for the unfair labor practices found in this case.
- 5. Respondents have failed and refused to apply the terms of the collective-bargaining agreement that Respondent Burns entered into with the Union since June 13, 2006, and by failing and refusing to bargain collectively with the Union as the exclusive collective-bargaining representatives of its employees, Nationwide violated Sections 8(a)(5) and (1) of the Act.

6. By unreasonably delaying in providing the Union information necessary for it to perform its duties as the exclusive collective-bargaining representative of the bargaining unit, namely, information in response to the Union's January 22, 2014, letter seeking information relevant to whether Nationwide was an alter ego of Burns, Respondents violated Section 8(a)(5) and (1) of the Act.

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7. By committing the unfair labor practices stated in paragraphs 5 and 6 above, Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents are alter egos and have engaged in certain unfair labor practices, I shall order them to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondents Burns and Nationwide, having unlawfully failed to apply the terms and conditions of employment set forth in the collective-bargaining agreement with the Union for their bargaining unit employees, Respondents shall give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement with the Union, and any automatic renewals or extensions of it.

Respondents shall further make those employees whole for any loss of earnings or other benefits, computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as computed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010). Respondents shall compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards. *Don Chavas*, *LLC*, *d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014).

Respondents shall, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, file a report allocating backpay with the Regional Director for Region 9. Respondents will be required to allocate backpay to the appropriate calendar years only. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. *AdvoServ of New Jersev, Inc.*, 363 NLRB No. 143 (2016).

Respondents shall further make whole their employees covered by Union benefit funds by making any delinquent contributions to those funds, including any additional amount due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). Respondents shall be required to reimburse their unit employees for any expenses ensuing from the failure to make the required benefit fund contributions, as set forth in *Kraft Heating & Plumbing*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), including any medical expenses that would have been covered by the funds. Such amounts shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502

(6th Cir. 1971), with interest as computed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁹

ORDER

The Respondents, Burns Machinery Moving & Installation, Inc., Louisville, Kentucky, and Nationwide Services, LLC, Louisville, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

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- 15 (a) Failing and refusing to honor the collective-bargaining agreement with the International Association of Bridge, Structural & Ornamental Iron Workers, AFL—CIO, Local Union No. 70 (Union), in effect from June 1, 2012, to May 31, 2015, which establishes the terms and conditions of your employment in the appropriate bargaining unit set forth in the Recognition clause during the term of the contract and any automatic renewals or extensions thereof.
 - (b) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of Respondents' employees in the appropriate unit during the term of the collective-bargaining agreement and any automatic renewals or extensions thereof.
 - (c) Repudiating and failing and refusing to apply to unit employees their collective-bargaining agreement since June 13, 2006.
 - (d) Unreasonably delaying in providing the Union information necessary for it to perform its duties as the exclusive collective-bargaining representative of the bargaining unit, namely, information in response to the Union's January 22, 2014 letter seeking information relevant to whether Nationwide was a disguised continuance or alter ego of Burns.
 - (e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
 - 2. Take the following affirmative action necessary to effectuate the policies of the Act.

²⁹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- (a) Give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement with the Union, and any automatic renewals or extensions of it
- 5 (b) Make whole unit employees of alter ego Nationwide Services, LLC, who did not receive contractual wage rates, benefits, or any other contractual terms, as a result of Respondents' failure to honor the terms of the collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

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- (c) Remit the fringe benefit funds payments that have become due and reimburse unit employees for any losses or expenses arising from Respondents' failure to make the required payments, in the manner set forth in the remedy section of this decision.
- (d) On request, bargain collectively in good faith with the Union as the exclusive representative of the employees in the appropriate bargaining unit during the term of the collective-bargaining agreement and any automatic renewals or extensions thereof.
- (e) Compensate each affected employee for the adverse tax consequences, if any, of receiving a lump-sum backpay award.
- (f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (g) Within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, file a report allocating backpay with the Regional Director for Region 9. Respondents will be required to allocate backpay to the appropriate calendar years only. The Regional Director will then assume responsibility for transmission of the report to the Social Security Administration at the appropriate time and in the appropriate manner. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).
- (h) Within 14 days after service by the Region, post at their facility in Louisville, Kentucky, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an

³⁰ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, either of the Respondents has gone out of business or closed its facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since June 13, 2006.

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(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 6, 2016

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Melissa M. Olivero
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection Choose not to engage in any of these protected activities.

WE WILL NOT refuse to honor the collective-bargaining agreement with the International Association of Bridge, Structural & Ornamental Iron Workers, AFL—CIO, Local Union No. 70 (Union), in effect from June 1, 2012, to May 31, 2015, which establishes the terms and conditions of your employment in the appropriate bargaining unit set forth in the Recognition clause during the term of the contract and any automatic renewals or extensions thereof.

WE WILL NOT fail and refuse to recognize and bargain in good faith with the Union as your collective-bargaining representative during the term of the collective-bargaining agreement and any automatic renewals or extensions thereof.

WE WILL NOT repudiate and fail and refuse to apply to unit employees your collective-bargaining agreement, by denying you contractual wage rates, benefits, or any other contractual terms.

WE WILL NOT refuse to furnish or unreasonably delay providing the Union with information that is relevant and necessary to its role as your bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed by Section 7 of the Act.

WE WILL give full force and effect to the collective-bargaining agreement effective from June 1, 2012, to May 31, 2015, and any automatic renewals or extensions thereof.

WE WILL, on request, recognize and bargain in good faith with the Union as your exclusive collective-bargaining representative during the term of the collective-bargaining agreement and any automatic renewals or extensions thereof.

WE WILL make you whole for any losses you may have suffered as a result of our refusal to honor the terms of the collective-bargaining agreement.

WE WILL remit any fringe benefit fund payments that have become due and reimburse you for any losses or expenses arising from our failure to make any required payments.

WE WILL compensate each affected employee for the adverse tax consequences, if any, of receiving a lump-sum backpay award.

WE WILL file a report with the Regional Director allocating backpay to the appropriate calendar years. The Regional Director will then transmit this report to the Social Security Administration at the appropriate time and in the appropriate manner.

WE HAVE provided the Union with the information it requested on January 22, 2014.

	_	BURNS MACHINERY MOVING & INSTALLATION, INC. (Employer)		
Dated	_			
	By _			
		(Representative)	(Title)	
		NATIONWIDE SERVICES, LLC		
		(Employer)		-
Dated	Ву			
		(Representative)	(Title)	-

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

550 Main Street, Federal Building, Room 3003, Cincinnati, OH 45202–3271 (513) 684–3686, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/09-CA-125050 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (314) 539–7780.